

APPEAL NO. 031201  
FILED JUNE 24, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 21, 2003. The hearing officer decided that the appellant (carrier) waived the right to contest compensability of right carpal tunnel syndrome (CTS); that because the carrier waived the right to contest compensability, the respondent (claimant) sustained a compensable injury in the form of an occupational disease on \_\_\_\_\_, as a matter of law; that the compensable injury includes right CTS; and that the claimant had disability from January 14 through May 5, 2002. The carrier appeals those determinations and also contends the hearing officer erred in not granting its request to take a doctor's deposition by written questions. The claimant responds, urging affirmance.

DECISION

Affirmed.

**CARRIER WAIVER**

The claimant testified that she injured her right wrist on \_\_\_\_\_, in the course and scope of her employment and filled out an incident report. A medical report dated January 9, 2002, reflects that the claimant sought treatment with Dr. H and he diagnosed the claimant with CTS. A medical report from Dr. G reflects that an electromyogram (EMG) test was performed on April 25, 2002, and the claimant's previous diagnosis of CTS was confirmed. The Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) form reflects that the carrier first received written notice of the claimed injury on February 27, 2002, and contested compensability as shown by the Texas Workers' Compensation Commission's (Commission) date stamp on March 20, 2002.

The hearing officer did not err in determining that the carrier waived the right to dispute compensability of the claimed injury. Section 409.021(a) provides, in pertinent part, that an insurance carrier shall, not later than the seventh day after the receipt of written notice of an injury, begin the payment of benefits as required by the 1989 Act or notify the Commission and the employee in writing of its refusal to pay benefits. It is undisputed that the carrier first contested the claimed injury more than seven days after receiving written notice of the injury. The carrier contends, however, that it did not waive its right to dispute the claimed injury, under Section 409.021, because it had no obligation to act because no benefits were immediately due and owing to the claimant. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, citing Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002), we interpreted this "pay or dispute" requirement to mean that a carrier must take some action within seven days of receiving written notice of an injury, and we admonished that a carrier

which does nothing does so at its own risk. Accordingly, we will not reverse the hearing officer's waiver determination on this basis.

The carrier also contends that it did not waive its right to dispute the claimant's CTS, asserting that this presented an extent-of-injury not a waiver issue. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) provides that Section 409.021, regarding the initiation of benefits and carrier waiver, does not apply to "extent of injury" disputes. Notwithstanding, we have said that that rule cannot be interpreted in a way that would allow a dilatory carrier to recast the primary claimed injury issue as an "extent issue" and thereby avoid the mandates of Section 409.021. See Texas Workers' Compensation Commission Appeal No. 022454, decided November 18, 2002; Texas Workers' Compensation Commission Appeal No. 021907, decided September 16, 2002; Texas Workers' Compensation Commission Appeal No. 021569, decided August 12, 2002; and Texas Workers' Compensation Commission Appeal No. 022183, decided October 9, 2002. The evidence shows and the hearing officer found that the primary claimed injury included CTS. As such, the carrier was obligated to dispute the compensability of the claimed CTS injury in accordance with Section 409.021. The carrier failed to do this. Accordingly, the hearing officer properly determined that the carrier waived its right to dispute the claimant's CTS injury.

### **REFUSAL TO ALLOW DEPOSITION**

The carrier also contends that the hearing officer erred in refusing to allow it to take a doctor's deposition by written questions. We review the hearing officer's rulings on the issue of approval or refusal to allow written deposition questions on an abuse-of-discretion standard. Rule 142.13(e) provides that a party seeking to take a deposition must obtain permission from the hearing officer. Under the circumstances of this case, and in light of the fact that we have affirmed the hearing officer's determination that the carrier waived the right to dispute compensability of the claim, we find any abuse of discretion in the hearing officer's denial of the claimant's request for the deposition was harmless error.

### **INJURY/DISABILITY**

The other issues before the hearing officer regarded whether the claimant sustained a compensable injury and disability from that injury. Conflicting evidence was presented on those issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS HOSPITAL INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

**ROBERT LAWRENCE DION  
6300 LA CALMA, SUITE 550  
AUSTIN, TEXAS 78761.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Margaret L. Turner  
Appeals Judge

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Veronica Lopez-Ruberto  
Appeals Judge